

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA

Date: May 27, 2010
Time: 2:00 p.m.
Dept.: Three (3)
Judge: Hon. Laura S. Taylor

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1 The Respondent provided no legal authority for any of the issues in his Trial Brief.
2 However, the Respondent pointed out that he issued checks to return the amount to Donald R.
3 Soucy (the "Debtor") so that the amount disclosed in the bankruptcy papers would comport with
4 the amount that the Debtor had paid for bankruptcy services.

5 The Respondent did not provide any legal authority for the proposition that the Court
6 should not order full disgorgement if the Court finds that the Respondent misrepresented the fees
7 he had been paid pre-petition, regardless of whether the Debtor requests the full disgorgement or
8 whether he refunded some amount to the Debtor. As the United States Trustee pointed out in her
9 trial brief, the disclosure requirements of the Bankruptcy Code and Bankruptcy Rules are strictly
10 and literally applied so that the Court could order complete disgorgement and additional sanction
11 of reasonable attorney fees and costs if the Court finds that the Respondent misrepresented his
12 fees. *Law Offices of Nicholas A. Franke v. Tiffany, U.S. Trustee (In re Lewis)*, 113 F.3d 1040,
13 1045-46 (9th Cir. 1997); *In re Deville*, 280 B.R. 483, 497 (9th Cir. BAP 2002).

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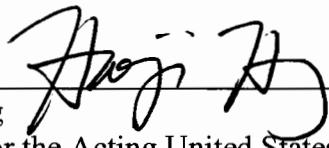
1 The Respondent also failed to provide any legal authority for the proposition that the
 2 Court should dismiss the application or withdraw the Court's Order to Show Cause Why
 3 Attorney Should Not Disgorge Fees or Be Sanctioned ("Order to Show Cause") with prejudice.¹
 4 The Respondent has a continuing duty to disclose and supplement. FED.R.BANKR.PROC.
 5 2016(b); see *In re Tan, Lie Hung & Mountain States Investments, LLC*, 413 B.R. 851, 859
 6 (Bankr.D.Or. 2009); *In re Perrine*, 369 B.R. 571, 579 (Bankr.C.D.Cal. 2007). Therefore, issues
 7 regarding Respondent's fees are always subject to scrutiny by the Court. In fact, the Court
 8 retains jurisdiction to review issues regarding fees even after dismissal of a case. *In re Menk*,
 9 241 B.R. 896, 906 (9th Cir. BAP 1999)(citing *Elias v. U.S. Trustee (In re Elias)*, 188 F.3d 1160,
 10 1162 (9th Cir. 1999) and a string of other Ninth Circuit Court of Appeals cases); *In re Orfa*
 11 *Corp. of Philadelphia*, 170 B.R. 257, 270 (Dist.E.D.Pa. 1994).

12 WHEREFORE, UST submits this Responsive Brief to Respondent's Trial Brief for
 13 Evidentiary Hearing on Order to Show Cause Why Attorney Should Not Disgorge Fees or Be
 14 Sanctioned.

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 17 Respectfully submitted,

18 TIFFANY L. CARROLL
 19 ACTING UNITED STATES TRUSTEE

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 21 Dated: March 17, 2010

22 By: /s/ Haeji Hong 
 23 Haeji Hong
 24 Attorney for the Acting United States
 25 Trustee

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 27 ¹ The United States Trustee notes that the Respondent requests dismissal of the application with
 28 prejudice. However, the Court has entered an Order to Show Cause and it would appear that the
 Respondent would be requesting that the Court withdraw the Order to Show Cause with
 prejudice.